

October 5, 2011

Gina Spade
Deputy Chief, Telecommunications Access Policy Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: DA 11-1588, released September 23, 2011

Dear Ms. Spade:

The Canton Public Library would like to appeal the FCC decision to decline our request for a waiver of the Form 471 application filing window for FY 2011, conveyed in the above referenced proceeding of September 23. While our library did not qualify for the pro forma approval granted to 20 petitioners who filed within 14 days of the filing deadline, it appears that other precedents would be applicable to our request. As referenced by another petitioner that was approved for a waiver under DA 11-1588 (Boston Renaissance School):

In 2006 and 2007, in the *Bishop Perry Order* and the *Academy for Academic Excellence Order*, the Commission and the Bureau, respectively, granted waivers to applicants who missed the FCC Form 471 filing window deadline due to technical malfunctions, school reorganizations, ***a misunderstanding related to the filing deadline***, personal staff emergencies, inadvertent errors, or circumstances beyond their control, including inclement weather.

The Canton Public Library failed to meet the Form 471 funding request deadline due to a misunderstanding of filing requirements for multi-year contracts, which should fall within the precedent just referenced. The complexity associated with E-Rate filing rules, for an initiate to the process, was exacerbated by the fact that we had to file multiple SPIN changes for FY2010, due to incorrect information provided by our vendors, late into the 2010 calendar year.

Footnote 8 of DA 11-1158 states that: "In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule" (p. 2). Our request for waiver of the Form 471 filing deadline is supported by this overarching goal, as it was not explicitly stated that our request for a waiver was denied on the basis of it not being in the public interest. It is difficult to understand how such a waiver, for an understandable error in the interpretation of complex procedures, would not be in the interests of the citizens of Canton, Michigan.

Your consideration of our appeal, or advice concerning the viability of such an appeal, would be greatly appreciated.



Leo Papa
Department Head, Information Technology
papal@cantonpl.org



Federal Communications Commission
Washington, D.C. 20554

Memo

To: Leo Papa
Canton Public Library

From: Gina Spade, Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Date: September 28, 2011

Re: DA 11-1588, released September 23, 2011

Please find accompanying this memo the Commission's decision on your request for review. The accompanying decision may be referenced in the future by its proceeding number and release date: DA 11-1588, September 23, 2011.

If the Commission has granted your request for review, please contact the Universal Service Administrative Company (USAC) at 888-203-8100 for more information regarding your application. In addition, once USAC has reviewed your application at issue in the attached order, you will receive a revised funding commitment decision letter.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver and Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
All Saints Elementary School)	File Nos. SLD-816848, <i>et al.</i>
Los Angeles, CA, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: September 23, 2011**Released: September 23, 2011**

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we address 34 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2007, 2009, and 2011 under the E-rate program (formally known as the schools and libraries universal service support program).¹ Specifically, consistent with the Commission's *Academy of Math and Science Order*,² and based on our review of the record, we find that two petitioners filed their applications prior to the E-rate program's FCC Form 471 application filing window deadline and 24 other petitioners have demonstrated that special circumstances exist to justify a waiver of that filing window deadline. We grant those requests for waiver and remand the underlying applications to the Universal Service Administrative Company (USAC) for further action consistent with this order.³ We deny the remaining eight requests for waiver because we find that the

¹ The requests for waiver and review are listed in appendices A, B, C, and D. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline.

² See *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (*Academy of Math and Science Order*); *infra* para. 2; see also *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-737946, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 16109 (Wireline Comp. Bur. 2010); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Al-Noor School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-768866, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 5792 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Beaver Area Memorial Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-750009, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011).

³ See appendices A, B and C; 47 C.F.R. § 54.507(c).

petitioners failed to present special circumstances to justify a waiver of the Commission's rules.⁴

2. Section 54.407(c) of the Commission's rules maintains that E-rate funds shall be available on a first-come-first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received.⁵ As an initial matter, we grant two appeals after finding USAC mistakenly rejected the applications even though the schools filed their applications and required certifications before the FCC Form 471 application filing window deadline for funding years 2007 and 2009.⁶

3. Additionally, in the 2010 *Academy of Math and Science Order*, the Commission granted waivers of the FCC Form 471 application filing window deadline because the applicants filed their FCC Form 471 applications within 14 days of the FCC Form 471 application filing window deadline or presented other special circumstances justifying a waiver.⁷ Applying the standards of the *Academy of Math and Science Order* to the instant cases, we grant 24 requests seeking waivers of the FCC Form 471 application filing window deadline for funding year 2011.⁸ Specifically, we grant requests from: (1) 20 petitioners that filed their FCC Form 471 applications within 14 days after the filing window deadline closed;⁹ (2) two petitioners that timely filed their FCC Form 471 applications, but filed their associated certifications late;¹⁰ (3) one petitioner whose FCC Form 471 application was filed late because its E-rate staff person suffered a serious medical emergency,¹¹ and (4) one petitioner that was subject to a financial

⁴ See appendix D; 47 C.F.R. § 1.3.

⁵ See 47 C.F.R. § 54.507(c).

⁶ See appendix A; Darrouzett Independent School District; Little Lake City School District; *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 7.

⁷ See *Academy of Math and Science Order*, 25 FCC Rcd 9256.

⁸ See appendices B and C. The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁹ See appendix B; *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8.

¹⁰ All Saints Elementary School filed its certification late due to a clerical error. See All Saints Elementary School Request for Review. Logan-Rogerville School District r-8 filed its certification late due to a technical glitch with USAC's electronic filing system. See Logan-Rogerville School District r-8 Request for Review. See also *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8.

¹¹ Boston Renaissance School. See *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8; *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Acorn Public Library District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-637819, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15474, 15477-78, para. 8 (Wireline Comp. Bur. 2008).

reorganization by its city causing it to file its FCC Form 471 application late.¹² Moreover, at this time, we find no evidence of waste, fraud, or abuse. Therefore, we find that good cause exists to grant the 26 petitioners' requests for review or waiver and remand the underlying applications listed in appendices A, B, and C to USAC for further action consistent with this order.¹³ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

4. We deny the remaining eight requests seeking waivers of the FCC Form 471 application filing window deadline for funding year 2011 because we find that the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules.¹⁴

5. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the requests for review or requests for waiver filed by the petitioners listed in appendices A, B, and C ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

6. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in appendix D ARE DENIED.

7. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in appendices B and C to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹² Even though the City of Loganville transferred fiduciary responsibility for the O'Kelly Memorial Library's telecommunications services to the library itself in mid-March of 2011, the library still filed its application within 30 days of the application filing window deadline. *See O'Kelly Memorial Library Request for Review. See Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Academy of Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-539076, 539722, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747-48, para. 4 (at n.11) (Wireline Comp. Bur. 2007).

¹³ *See* appendices A, B, and C. In performing a complete review and analysis of the underlying applications, USAC shall either grant the underlying applications before it, or, if denying an application, provide the applicant with all grounds for denial.

¹⁴ *See* appendix D; 47 C.F.R. § 54.507(c); *Academy of Math and Science Order*, 25 FCC Rcd at 9261-62, para. 13.

APPENDIX A**Requests Granted****(FCC Form 471 Applications Filed Before the Close of the Filing Window)**

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Darrouzett Independent School District Darrouzett, TX	685919	2009	Mar. 8, 2010
Little Lake City School District Santa Fe Springs, CA	567790	2007	Mar. 30, 2010

APPENDIX B**Requests Granted****(FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window)**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Annunciation Elementary School Denver, CO	821374	2011	Aug. 11, 2011
Brown County Educational Service Center Georgetown, OH	800383	2011	July 13, 2011
Calvert County Public Schools Prince Frederick, MD	821684	2011	June 28, 2011
Chambers County Library System Anahuac, TX	800756	2011	Aug. 8, 2011
East Greenbush Community Library East Greenbush, NY	803326	2011	Aug. 1, 2011
Guernsey County District Library Cambridge, OH	821510	2011	Aug. 11, 2011
Karl Miles LeCompte Memorial Library Corydon, IA	821479	2011	Aug. 9, 2011
Media-Upper Providence Free Library Media, PA	821504	2011	Aug. 22, 2011
North Pointe Academy Highland Park, MI	822033, 822035, 822036, 822037, 822038, 822039	2011	Aug. 23, 2011
Oaks Christian School Westlake Village, CA	821946	2011	Aug. 18, 2011
Perry Central Community School Corp. Leopold, IN	821852	2011	Aug. 31, 2011
Saint Mary's Springs High School Fond du Lac, WI	821410	2011	Aug. 8, 2011
Salem City Public Schools Salem, VA	821799	2011	July 21, 2011

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Schulenburg Secondary School Schulenburg, TX	822020 a/k/a 822445	2011	July 28, 2011
Seminole County School District Donalsonville, GA	821880	2011	Aug. 5, 2011
Shekinah Learning Institute on behalf of Shekinah Radiance Charter School San Antonio, TX	819799	2011	July 27, 2011
Spring Valley CC School District 99 Spring Valley, IL	822245	2011	Aug. 15, 2011
Stafford County Public Schools Stafford, VA	799919	2011	Sept. 8, 2011
Union County Library System Lewisburg, PA	821878	2011	Aug. 4, 2011
The White Mountain School Bethlehem, NH	821721, 821751, 821975, 821976	2011	Aug. 18, 2011

APPENDIX C

Requests Granted

(Waivers Granted for Other Special Circumstances)

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
All Saints Elementary School Los Angeles, CA	816848	2011	Aug. 24, 2011
Boston Renaissance School Boston, MA	794236	2011	Aug. 1, 2011
Logan-Rogersville School District r-8 Rogersville, MO	776892	2011	Aug. 16, 2011
O'Kelly Memorial Library Loganville, GA	822368	2011	Aug. 5, 2011

APPENDIX D

Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Canton Public Library Canton, MI	822725	2011	Aug. 15, 2011
Crossroad Schools Jacksonville, FL	822527	2011	Sept. 12, 2011
El Paso Public Library El Paso, TX	Did not file	2011	July 25, 2011
Gloucester City Library Gloucester City, NJ	799205 a/k/a 822466	2011	Aug. 9, 2011 supplemented on Sept. 7, 2011
Leepertown Township Public Library Bureau, IL	821854	2011	Aug. 9, 2011
Lower Kuskokwim School District Bethel, AK	Did not file	2011	July 27, 2011
Mountain View Christian School Las Vegas, NV	822054	2011	Sept. 8, 2011
SETA Head Start Sacramento, CA	806378	2011	Aug. 23, 2011